



By Facsimile and First-Class Mail

Herschel B. Williamson
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DA 07-6

Re: Request for Waiver and Extension of 800 MHz SMR Construction Requirements, Linda Sue & Herschel Bruce Williamson, FCC File No. 0002415919

Dear Mr. Williamson:

This letter addresses the above-captioned Request for Waiver and Extension of 800 MHz Specialized Mobile Radio (SMR) Construction Requirements (Waiver Request), filed by you on December 19, 2005, seeking waiver of the construction requirements in section 90.685 of the Commission's rules¹ as they apply to one 800 MHz SMR economic area (EA) license, call sign

¹ 47 C.F.R. § 90.685.

WPRQ979.² As discussed below, we grant you an extension of your construction requirements until (a) six months from the date of this letter (June 4, 2007), if the channels assigned by the 800 MHz Transition Administrator (TA) can be used, in advance of band reconfiguration in the region, without causing interference; or (b), if your (newly assigned) channel(s) cannot be activated without interference to other systems, then six months measured from the date band reconfiguration is completed in the relevant National Public Safety Planning Advisory Committee NPSPAC Region(s) associated with your EA license.

The Commission may grant 800 MHz SMR EA licenses for ten-year terms,³ but those licenses also have construction requirements that must be satisfied within five years of the initial license grant. Specifically, within three years of license grant, a licensee must construct and place into operation enough base stations to provide coverage to at least one-third of the population of the licensed area; and within five years of license grant, the licensee must provide coverage to two-thirds of the licensed area population. EA licensees may, in the alternative, provide substantial service to their markets within five years of the initial grant of their license.⁴ Failure to meet these construction requirements results in forfeiture of the entire EA license.⁵

The Commission granted you call sign WPRQ979 on December 20, 2000, with a five-year construction deadline of December 20, 2005. In March 2002, the Commission initiated a rule making proceeding to respond to growing concern that cellular-architecture 800 MHz land mobile, and 800 MHz cellular systems were causing interference to public safety and other 800 MHz licensees using “high-site” architecture.⁶ To resolve the problem, cellular architecture and high-site architecture systems are being spectrally segregated in the 800 MHz band.⁷ This “rebanding” requires some 800 MHz incumbents to modify their systems to operate on “replacement channels” specified by the TA. The Commission, in the *Rebanding Report and Order*, envisioned a situation where a licensee would face both a pending construction deadline and pending relocation. Specifically, the Commission stated that, because the 800 MHz rebanding will occur incrementally in fifty-one geographic “NPSPAC” regions,

“[s]ome incumbent 800 MHz licensees may face construction deadlines prior to their being scheduled for relocation. To resolve this issue we will allow licensees which are ready to construct and waiting only for assignment of their new channel to submit a waiver request demonstrating that they have commenced construction, *e.g.*, have on hand, or have placed a firm order for, non-frequency sensitive equipment, have erected a tower, obtained a commitment for tower space, etc.”⁸

² See File No. 0002415919. Williamson filed amendments on April 3, 2006 (April Amendment); August 31, 2006 (August Amendment); and November 20, 2006 (November Amendment) to provide additional information. In addition, Williamson submitted an earlier extension request on November 30, 2005 that was dismissed on December 20, 2005 for lack of a fee payment. See File No. 0002396684.

³ 47 C.F.R. § 90.685(a).

⁴ 47 C.F.R. § 90.685(b). For purposes of Section 90.685, “substantial service” is defined as “service which is sound, favorable, and substantially above a level of mediocre service.” *Id.*

⁵ 47 C.F.R. § 90.685(d).

⁶ See *Improving Public Safety Communications in the 800 MHz Band*, *et al.*, WT Docket 02-55, *Notice of Proposed Rule Making*, 17 FCC Rcd 7169 (2002).

⁷ *Improving Public Safety Communications in the 800 MHz Band*, *et al.*, *Report and Order*, *Fifth Report and Order*, *Fourth Memorandum Opinion and Order*, and *Order*, WT Docket No. 02-55, *et al.*, 19 FCC Rcd 14969 (2004) (*Rebanding Report and Order*).

⁸ *Rebanding Report and Order*, 19 FCC Rcd at 15079 ¶ 205 (footnote omitted).

Further, the Commission stated that an incumbent licensee may seek extension “of the construction period until (a) six months after the TA has specified a channel or channels if that channel or those channels can be used in advance of band reconfiguration in the region, without causing interference; or (b) if its (newly-assigned) channel(s) cannot be activated without interference to other systems, then, six months measured from the date band reconfiguration is completed in the relevant NPSPAC region(s).” The Commission also stated that its waiver rules will apply and that any waiver request will be evaluated particularly on how well the licensee establishes “good cause” for granting such a waiver.⁹

In your Waiver Request, you indicate that you have signed a contract with Nextel and Nextel Partners (Nextel) for relocation of WPRQ979 to new channels and need an extension to “comply with Wave 2 of the FCC Targeted Timeline for 800 MHz band” relocation.¹⁰ You later supplemented your Waiver Request to explain that Nextel had existing operations that precluded construction of your system and since you already signed a relocation agreement with Nextel, you request the relief provided for in paragraph 206 of the *Rebanding Report and Order*.¹¹ You further explain that you purchased real property, repeater station equipment and portable radios for construction of WPRQ979 and have commitment of tower space for the repeater equipment.¹² You also state that “WPQR979 would have been constructed on Auction 34 whitespace by the original construction deadline until the FCC 800 band frequency relocation announced reassignment of these frequencies to others.”¹³

We grant your Waiver Request because we find that you face the situation that the Commission envisioned and provided for in the *Rebanding Report and Order*. Consistent with the guidance in the *Rebanding Report and Order*, we find that you have taken steps to be ready to construct your system by purchasing equipment and obtaining tower space,¹⁴ and are waiting for approval to use your new channels assigned by the TA. Further, we find that requiring you to construct your facilities prior to reconfiguration would not be in the public interest because it may result in the type of interference the Commission sought to resolve in the *Rebanding Report and Order*. Additionally, requiring construction prior to reconfiguration would be unduly burdensome on you and your customers.

For the reasons stated above, we find good cause to grant you the relief outlined in the *Rebanding Report and Order*, with a slight modification. Specifically, since the TA has already assigned you new channels, we will commence the six month extension period from the date of this action to ensure that you get the full relief provided for by the Commission. Alternatively, as outlined in the *Rebanding Report and Order*, if your newly-assigned channels cannot be activated without interference to other systems, then the six month extension is measured from the date band reconfiguration is completed in the relevant NPSPAC Region(s) associated with WPQR979. This action is taken under delegated authority pursuant to section 4(i) of the Communications Act, as amended, and sections 0.331 and 1.925 of the Commission’s rules.¹⁵

⁹ *Rebanding Report and Order*, 19 FCC Rcd at 15079 ¶ 206 (citing 47 C.F.R. § 1.925). Pursuant to Section 1.3, the Commission may waive its rules if there is “good cause” to do so and if certain other criteria are satisfied. 47 C.F.R. § 1.3. See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990). In the context of 800 MHz Rebanding, the Commission defines “good cause basis” as a showing that the licensee would have constructed but for the fact that the band reconfiguration would affect its proposed facilities. *Rebanding Report and Order*, 19 FCC Rcd at 15079 ¶ 206.

¹⁰ Waiver Request at 1. An application to add replacement frequencies to call sign WPRQ979 was filed on February 10, 2006. See File No. 0002478181.

¹¹ April Amendment.

¹² November Amendment.

¹³ *Id.*

¹⁴ *Rebanding Report and Order*, 19 FCC Rcd at 15079 ¶ 205 (footnote omitted).

¹⁵ 47 U.S.C. § 154(i), 47 C.F.R. §§ 0.331, 1.925.

Sincerely,

Thomas P. Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau